PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

07/07

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43*bis*.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.	International filing date *(day/month/year)*	Priority date *(day/month/year)*
PCT/EP2005/000191	07.01.2005	07.01.2004

International Patent Classification (IPC) or both national classification and IPC
A61K35/78, A61P19/00, A61P29/00, A61P33/14, A61P37/00

Applicant
TAAL, Leendert

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for International preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notifed the International Bureau under Rule 66.1*bis*(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

   ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

   a. type of material:

   ☐ a sequence listing

   ☐ table(s) related to the sequence listing

   b. format of material:

   ☐ in written format

   ☐ in computer readable form

   c. time of filing/furnishing:

   ☐ contained in the international application as filed.

   ☐ filed together with the international application in computer readable form.

   ☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 10 with respect to industrial applicability

because:

☒ the said international application, or the said claims Nos. 10 relate to the following subject matter which does not require an international preliminary examination *(specify)*:

see separate sheet

☐ the description, claims or drawings *(indicate particular elements below)* or said claims Nos. are so unclear that no meaningful opinion could be formed *(specify)*:

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the whole application or for said claims Nos.

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form
- ☐ has not been furnished
- ☐ does not comply with the standard

the computer readable form
- ☐ has not been furnished
- ☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

☐ See separate sheet for further details

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	1-10
	No:	Claims	
Inventive step (IS)	Yes:	Claims	
	No:	Claims	1-10
Industrial applicability (IA)	Yes:	Claims	1-9
	No:	Claims	

2. Citations and explanations

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

Claim 10 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following documents:

D1: MUR ERICH ET AL: "Randomized double blind trial of an extract from the pentacyclic alkaloid-chemotype of uncaria tomentosa for the treatment of rheumatoid arthritis." THE JOURNAL OF RHEUMATOLOGY. APR 2002, vol. 29, no. 4, April 2002 (2002-04), pages 678-681, XP009039229 ISSN: 0315-162X

D2: DE 198 53 919 A (WIRTH WOLFGANG) 25 May 2000 (2000-05-25)

D3: DATABASE WPI Section Ch, Week 200262 Derwent Publications Ltd., London, GB; Class B04, AN 2002-581546 XP002305247 & RU 2 185 182 C2 (KHVOSTENKOV S I) 20 July 2002 (2002-07-20)

D4: WO 02/47701 A (KIM KYOUNG-MI ; KIM MIN-YOUNG (KR); ANGIOLAB INC (KR); MOON CHANG-HEE) 20 June 2002 (2002-06-20)

D5: EP-A-0 270 690 (DAINIPPON INK & CHEMICALS ; NIPPON HYPOX LAB INC (JP)) 15 June 1988 (1988-06-15)

D6: US 2002/192241 A1 (MCCLEARY JOEL ET AL) 19 December 2002 (2002-12-19)

If not indicated otherwise, the relevant passages are those mentioned in the International

search report.

Art. 33(2) The present application meets the requirements of Article 33(2) PCT, because the subject-matter of **claims 1-10** appears to be new in the sense of Article 33(2) PCT since the combination of the claimed plant compositions is not disclosed in the prior art.

Art. 33(3) The subject-matter of **claims 1-10** is not considered to involve an inventive step in the sense of Article 33(3) PCT.

D1 discloses the use of *Uncaria tomentosa* for the treatment of rheumatoid arthritis, from which the subject-matter of the present application differs in that Uncaria tomentosa is combined with further plant (extracts).

The problem to be solved by the present invention may therefore be regarded as how to provide an improved medicament for the treatment of rheumatoid arthritis.

The present application suggests to solve the problem posed by the claimed combinations.

Yet, it is known from the teaching of D2-D6 that the additional plant (extracts) are useful in the treatment of rheumatoid diseases or show antiinflammatory effects.

Taking into account the teaching of the cited prior art the following reasoning applies:

With respect to the subject-matter of the remaining **claims 1-10** the applicant's attention is drawn to the fact that there seems to be no basis for inventive step within the present application as filed since no evidence can be found that the features which are novel result in a solution of the posed problem which could not have been foreseen by the skilled person.
Being aware of the teaching of D1 the skilled person performed an arbitrary

choice out of one list containing all known antirheumatic plants to select. Since there is no surprising effect resulting from that choice, the solution proposed in **claims 1-9** of the present application is not considered to be inventive in the sense of Article 33(3) PCT.

Art. 33(4) The subject-matter of **claims 1-9** is considered to be industrially applicable in the sense of Art. 33(4) PCT.

For the assessment of the present **claim 10** on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.